

Date January 31, 2013

OSEI Corporation Response to Kyle Jellison of NOAA's Email of January 30, 2013, Which Does not Contain a Decision for The Use of OSE II for the Sorrel Bayou spill

Dear Kyle Jellison, and the entire Unified Command and or RRT IV,

Just as you mentioned in your email today, the responsible party's or its obvious there has been some form of a request to the RRT for the use of OSE II on the Sorrel Bayou spill. The FOSC stated to the CEO of the OSEI Corporation on January 25, 2013, there has been attempt for OSE II to be used on this spill. The FOSC further stated that the RRT brought up objections to the use of OSE II, including a concern that OSE II has a surfactant. This was originally stated verbally by Charlie Henry of NOAA, showing an utter lack of understanding of Mother Nature's own natural processes in cleaning up oil spills. We have repeatedly addressed this, in writing, proving incontrovertibly that the fact that OSE II contains a non-toxic, totally safe, bio surfactant that is used by Mother Nature to clean up oil spills and, thus, showing that it does not matter what OSE II contains since it is not harmful to the environment. This has been thoroughly proven by the 18 toxicity tests we have repeatedly provided to the EPA and the RRTs and the thousands of field applications, including on open water, The FOSC stated at that point that the surfactant issue was not the deal killer.

Your email response to David Fakouri pointed to two attachments (NRT and RRT's Fact Sheets on Bioremediation) that have not been updated for 12 years—these documents are under revision by RRT VI's Science and Technology Committee, the project of which I worked on under the Chair that has still not been completed.. ; While referenced these documents, you did not state what the RRT's decision was in regards to the FOSC's request. I would appreciate the decision in writing, which you are legally obliged to provide to me, and I want to know, in the RRT, who, specifically by name and position, voted for OSE II and who voted against it, their reason for denial, and what additional documents need to be submitted that would resolve these concerns so that we can gain immediate approval.

40 CFR clearly states that if the FOSC wants to utilize a product that is on the NCP list he can, as long as he notifies the RRT. The RRT VI is now opposing the request to utilize a product to protect the natural resources of the State of Louisiana. The FOSC stated he believes OSE II would be better due to the fact the spill is in such a difficult area to access the oil, and get the oiled debris out of the environment, the contractor would have to do damage to the environment to carry out removal actions. The FOSC realized the application of OSE II would remove the oil from the area without the need to execute any destructive invasive actions.

Your email referencing an, incomplete and inaccurate guidance document and fact sheet suggests that, even though the information is erroneous, you are attempting to use this information to not allow OSE II without explicitly stating the exact reasons why. As I stated, I want an explicit answer as to what are the exact reasons that OSE II is being denied for use on this spill.

The Clean Water Act (CWA) and OPA90 are the laws from which the 40 CFR part 300, including subpart J, regulations are derived with the purpose of fulfilling the intent of the CWA. The CWA states it is intended to address spills to *remove* oil spills to protect the natural resources of the United States. When the EPA/NOAA/RRT make any decision in regards to this, they must do so following the *intent* of the law. The intent of the law is what must be upheld, regardless of omissions in guidance documents and incomplete fact sheets. Not concurring with the use of OSE II, amounts to not employing a means of removing all the pollutants from this spill site, despite there being a proven means to do so (OSE II), which is a clear violation of the intent of the law. Not stating an explicit reason why its use is being denied becomes a debarment issue in violation of procurement laws.

As you have brought up these earlier-written false and misleading documents, I will describe their history for you. I have been involved with the EPA since before they were written, and have observed and communicated about their inaccuracies since the day they were published. It is important that you understand their malintent, which has been allowed to go unchecked until this day. But, as you have used them in this situation with the Sorrel Bayou spill to stop an FOSC from fulfilling his mandated duties to protect the environment, and to arbitrarily stop the OSE II product from being utilized – the only product currently on the NCP list that could actually swiftly and effectively remove close to 100% of the oil, I will cover this in further detail.

In 1992 the US EPA was under a contract to use public funds to develop a protocol for bioremediation products to get on the NCP list. The process was a tiered process. The first tier was for the companies to provide information about their product to the committee. In this process, the EPA arbitrarily left out OSE II; however, a Dr. Larry McGeehan resigned from NETAC and then called and told us the EPA had arbitrarily left OSE II out, even though we had presented the most complete data set of any of the products that had submitted information. Once this information was presented to the EPA's Al Venosa and others, they acquiesced and made OSE II part of the protocol development.

OSE II and a couple of other products were then vetted by 31 scientists including EPA scientists, and these products showed the ability to degrade hydrocarbons on weathered oil. A product only had to show it could reduce the oil by 5%, OSE II reduced the oil by 98%. These products were then tested at Gulf Breeze for toxicity, and they were tested in an open mesocosm (simulated open water test) laboratory test to see if a product could be used in the open water. The effluent from the open mesocosm test was tested on marine species to see if any of the bioremediation products showed any toxicity. Our 9 tests they performed were presented to you in

the 18 toxicity tests document. We found out that the EPA stopped the test due to the fact Exxon's product Inipol could not show any reduction; however, we were told anonymously, OSE II was the only product to make it to Tier IV - an open water test.

There was a contract using public funds that stated once all the tests were completed and the protocol was developed that all the information developed was to be given to the response community, contractors, and the vendors that supplied products. The terms of that contract were violated by the US EPA because, despite our requests, they never provided our test results, or provided any information as the contract required.

In 1995 I made a FOIA request to the EPA to force them to give me all the OSE II test data. I received a letter back stating they did not have any of our test data. However, two and a half years later, RRT III was attempting to develop a handbook for FOSC's, titled Job Aides for FOSC's. They asked me if I was interested in reviewing this handbook, and, if so, they wanted my comments. When I opened up the handbook I was surprised to see the OSE II EPA/NETAC tests, the exact tests the EPA had told us they didn't have. The EPA had clearly violated the law denying our FOIA request! This information showed the great efficacy test results OSE II produced.

The OSEI Corporation now had in hand efficacy test results for Tier II, as well as EPA performed toxicity tests, which clearly showed OSE II was non toxic to marine species and was absolutely capable of remediating oil. The EPA was ready to start using this first response great product right? No.

You are probably wondering why I am mentioning this. The reason is, during this time, we were able to sort of 'trick' other groups in the EPA into sending us more of our Tier III test data, [which by law we should have been provided without going through these machinations]. I received Day 0, as well as the second set of test results, and the 9 toxicity tests that showed OSE II's LC 50 being greater than 5000 - all being more proof from the EPA themselves that OSE II was non toxic. The EPA was able to keep the final results of Tier III, however, as I stated, they were given to us anonymously. OSE II was presented for Tier IV.

So, what you have to understand from this information so far is that the US EPA is fully aware of a first-response non toxic bioremediation product that is extremely effective at remediating oil. The OSEI Corporation during that time was also developing a track record of tests and real world cleanups that we continued to present to the EPA, and Al Venosa in particular. The EPA also performed a search for peer-reviewed information and Al discovered there was a peer-reviewed test with OSE II that showed an ability to remediate oil. However Al would never fully acknowledge this information or these results. Nonetheless, the OSE II track record continued to unfailingly show that common sense would dictate OSE II's use on any oil spills in any environment.

Al Venosa, with full knowledge of OSE II and the other bioremediation products' modes of action wrote the "Fact" Sheet you mentioned in your email. If you read the "Fact" Sheet it makes statements in regards to bacterial products and nutrients, and makes no mention of a first-response [EA Type] bioremediation product. The OSEI Corporation objected numerous times directly to Al Venosa and the Administrator that the third basic type of bioremediation product had been left out. Al Venosa refused to correct the "Fact" Sheet even though he had full knowledge of its inaccuracies. So you are referring to an incomplete document that it appears was generated to prevent anyone, especially FOSC's, from having the full body of knowledge in regards to bioremediation products and most importantly the vital data they need about Category EA/OSE II. Anyone who factually wants to see oil spills effectively and thoroughly cleaned up, and who actually wants to protect the environment, the wildlife, and the public's health, would be upset if they knew they had been working off such a slanted, incomplete document, and would not continue to make reference to that document as though it were a valid guidance document for accurate decisions in the field of oil spill cleanup.

As you can see now, the guidance document was developed from the "Fact" Sheet, (garbage in, garage out). In RRT VI, the regional administrator was Charles Gazda. He and Al Venosa, , as well as the EPA Washington Administrator, knew full well all the aspects of OSE II, yet this guidance document was promulgated to seemingly mislead FOSC's and RRT's to clump OSE II with other bioremediation products, effectively preventing the use of OSE II. After 23 years of this nonsense, I cannot think of another reason, Al Venosa would not divulge all the true and correct information so the FOSC's could make an informed decision, and allow RRT's to make informed decisions, other than the intent was to purposefully prevent OSE II from competing in this market. Another point I feel compelled to make about this is a *guidance* document – it is not law, and it is not absolute. Knowing that, combined with the fact that it is patently misleading and incorrect, oil spill cleanup officials who actually want to clean up oil spills should avoid utilizing it to guide their decisions. The guidance document states it is a living document that can be updated, and the re-written {3 types of Bioremediation } guidance document (again attached) was intended to replace the outdated material being used by the NRT and RRTs on the subject. As a part of our providing you with all of the accurate information, you were also given a document titled OSEI RRT Brochure that clearly shows OSE II has already been used on a US navigable waters spill with RRT VI, even though they were in possession of the misleading "Fact" Sheet and the incomplete guidance document. So to bring these up as a reason not to use OSE II is clearly an arbitrary act that is not in line with the intent of the Clean Water Act.

The OSEI RRT Brochure clearly shows the EPA has full and complete knowledge that the Navy has used OSE II on US navigable open waters on hundreds of spills for over a three and a half year period with whales and dolphins nearby, and that there were never any adverse reactions with the use of OSE II. And that OSE II addressed 100% of these spills. The Navy stated to the EPA officials that mechanical clean up was only getting a small portion of their spills and their cost had been lowered by

87% through using OSE II. I also presented several field demonstrations of OSE II with ABC taking video of the demonstrations, in front of Graig Taffaro, a Parish President in Louisiana, as well as a demonstration at Waveland Beach, Mississippi with Senator Gollot with EPA RRT IV officials in attendance with ABC also taking video of that. The demonstration showed the successful use of OSE II on marsh grass and sandy beach. I also gave you the link to a video that clearly shows a live demonstration we did in the Arabian Gulf and Dubai, successfully using OSE II on open water. The videos dramatically show its workability. the demonstrations are quite clear!

You highlight the NRT guidance where it states *bioremediation cannot be used on open water*, yet you had links to numerous videos proving this is not true for OSE II, so are you going to believe your eyes with third party witnesses, including state and EPA officials, or obvious false misleading statements in a guide document that has not been updated for 12 years, and has been established as faulty and incomplete the day it was written.

I stated earlier, a large number of scientists who were vetting products in the EPA/NETAC contract have already established OSE II as an effective, and non toxic response tool. I also provided a document from May 5th and 6th 2010 which covered the meetings I had at the La. state capital, which after the two meetings on May 5th they ended up in a demonstration with La state senators, lawyers, La state Homeland security officials, secretaries, Chris Piehler of La DEQ, and Dean Mallory the head of Governor Jindal's fast track review committee. There were pictures provided in the document with senators in the frames when OSE II was applied. The conclusion of the successful demonstration caused the Senators to ask me to provide all the OSE II technical data so that numerous La professors and PhDs including Dean Mallory could vet OSE II. After 5 hours of review they called us and stated OSE II has been deemed to have merit and needs to be demonstrated immediately for the governor, and they requested that myself and two OSEI associates be in the Governors office at 8:30 am the next morning. If you read further, you can see how the EPA stopped the governor from protecting his states natural resources and health safety and welfare of his people.

The main thing you need to take away from the Governors fast track review committee is that a large group of PHD's and prominent professor's approved OSE II, and that, along with the EPA/NETAC scientist reviews makes for a long list of scientist that have vetted OSE II as an efficacious, non toxic product.

Now you come along and do not put anything in writing, you highlight a passage in a faulty incomplete guide document that is in opposition to what you can clearly view in demonstrations.

You also need to read further in your guide document where it clearly states that bioremediation cannot remediate heavy in emulsion oil. Once again refer to the OSEI RRT Brochure, and read the EPA RRT VII recent test with OSE II on fresh water from a river and fresh water from a lake, on very heavy waste oil it shows that in less than

a month OSE II remediated 73% of the heavy waste oil, and it would have only taken a short time longer to reach 100%. The US EPA has used public funds to perform this test of OSE II on heavy oil, so based on your email, are you still going to point to the statement in the document that says bioremediation products cannot remediate heavy oil, or will you now recognize the statement is incorrect, and go with the new information. Are you going to refer to the false guide document statement, even though you know it is wrong! The entire RRT needs to check its job description and job intended function.

You now have ample information which there is even more damaging information in regards to the EPA and RRT's arbitrary debarment conduct, however I and the public whom you work for are expecting you to act on the obvious knowledge and realize your working document is out of date and needs revision because it in fact contains faulty and incomplete data, hindering effective spill response and the intention of the law. In light of these facts, I am asking you to concur, authorize, or approve OSE II so the FOSC can do his job. I expect your positive approval today.

Sincerely,

Steven Pedigo

PS, We were only allowed enough time for a first edit so bear with the document, however we thought it important to get the information in your hands since the spill is effecting the environment, and mechanical clean up could be needlessly destroying the environment!